

## SENATE BILL NO. 158

INTRODUCED BY R. LAIBLE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA IMPACT FEE ACT; ALLOWING A LOCAL GOVERNMENT ENTITY TO IMPOSE IMPACT FEES BY ORDINANCE OR RESOLUTION UNDER CERTAIN CIRCUMSTANCES; LIMITING IMPACT FEES TO A PROPORTIONATE SHARE OF SYSTEM IMPROVEMENT COSTS; REQUIRING A LOCAL GOVERNMENT ENTITY THAT INTENDS TO IMPOSE IMPACT FEES TO ESTABLISH AN IMPACT FEE ADVISORY COMMITTEE; PROVIDING FOR THE DETERMINATION OF IMPACT FEES; LIMITING REQUIREMENTS FOR SYSTEM IMPROVEMENTS FOR PUBLIC FACILITIES AFTER AN ORDINANCE OR RESOLUTION HAS BEEN ADOPTED; REQUIRING FINANCIAL REPORTS FOR IMPACT FEES; PROHIBITING A LOCAL GOVERNMENT WITH SELF-GOVERNING POWERS FROM IMPOSING IMPACT FEES OTHER THAN AS AUTHORIZED BY LAW; AMENDING SECTIONS 2-7-503 AND 7-1-111, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Montana Impact Fee Act".

**NEW SECTION.** **Section 2. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) (a) "Capital improvement" means an improvement to a public facility, by new construction or acquisition, with an expected minimum useful life of 20 years or more that increases the capacity of a public facility to provide services.

(b) The term does not include books, furniture, consumable supplies, or computers.

(2) "Connection charge" means the actual cost of connecting a property to a public utility system and is limited to the labor and materials involved in making connections and installing meters.

(3) "Development" means construction or installation of a building or structure, a change in use of a building or structure, or a change in the use, character, or appearance of land when the construction, installation, or change uses the existing capacity of public facilities or creates additional demand or need for public facilities.

(4) "Development approval" means written authorization from a local government entity that authorizes the commencement of development.

(5) "Facilities plan" means a plan that describes all new public facilities needed to serve projected growth and includes the proposed location of the public facility and schedule of estimated dates for commencing and completing the construction or installation of each public facility.

(6) (a) "Impact fee" means a monetary assessment required as a condition of development approval.

(b) The term does not include:

(i) a charge or fee to pay for administration, plan review, or inspection costs associated with a permit required for development;

(ii) a connection charge;

(iii) the cost of developing or applying calculations used in determining impact fees or the cost of developing or applying an ordinance; or

(iv) any other fee specifically authorized by law, including but not limited to user fees, special improvement district assessments, and costs of ongoing maintenance.

(7) "Local government entity" has the meaning provided in 7-6-602 and includes a charter form of government.

(8) "Public facility" means a:

(a) water supply production, treatment, storage, or distribution facility;

(b) wastewater collection, treatment, or disposal facility;

(c) transportation facility, including roads, streets, bridges, rights-of-way, traffic signals, and landscaping;

(d) storm water collection, retention, detention, treatment, or disposal facility or a flood control facility;

or

(e) police, emergency medical rescue, or fire protection facility.

**NEW SECTION. Section 3. Impact fees -- authority -- requirements for ordinance or resolution.**

(1) A local government entity that has adopted a facilities plan may impose an impact fee by ordinance or resolution, subject to the requirements of [sections 1 through 6].

(2) A local government entity may impose impact fees on behalf of local districts.

(3) A local government entity may require a monetary assessment to pay for capital improvements to public facilities only as a condition of development approval as authorized by law.

(4) An impact fee may not exceed a proportional share of the cost of system improvements as based on the facilities plan.

(5) An ordinance or resolution authorizing the imposition of an impact fee must:

(a) require payment of the fee no earlier than the date of issuance of a building permit if a building permit is required for the development or no earlier than the time of wastewater or water service connection or well or septic permitting;

(b) establish guidelines for individual assessment of impact fees; and

(c) provide for the granting of credits and refunds:

(i) if the impact fees are not collected or spent in accordance with the impact fee ordinance or resolution or in accordance with the facilities plan; or

(ii) in accordance with a voluntary agreement between the local government entity and the individual or entity being assessed the impact fees.

(6) (a) An impact fee for a transportation facility as defined in [section 2(8)(c)] may be assessed only to pay for system improvements within:

(i) 1/2 mile from the development for a city or town; or

(ii) 3 miles from the development for a county.

(b) An impact fee for a transportation facility may be assessed to pay for a proportionate share of system improvement costs for system improvements outside of the areas authorized under subsection (6)(a) if the governing body demonstrates in writing that impacts attributable to the development would unreasonably impair the ability of the local government entity to provide adequate services related to public health and safety outside of the authorized area.

**NEW SECTION. Section 4. Impact fee advisory committee.** (1) A local government entity that intends to propose an impact fee ordinance or resolution shall establish an impact fee advisory committee.

(2) An impact fee advisory committee must include at least one active builder who is also a contractor registered as provided in Title 39, chapter 9, one active developer, one active realtor, and one certified public accountant. The committee shall review and monitor the process of calculating, assessing, and spending impact fees.

(3) The impact fee advisory committee shall serve in an advisory capacity to the governing body of the local government entity.

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2        **NEW SECTION. Section 5. Determination of impact fees.** Calculations used to determine impact  
3 fees:

- 4            (1) must be based on the facilities plan adopted by the local government entity;  
5            (2) must be developed by an independent and neutral party;  
6            (3) must be based on a reasonable and equitable formula using generally accepted accounting  
7 principles;  
8            (4) may not exceed the proportionate share of the capital cost of future public facilities after the  
9 government considers payments for system improvements reasonably anticipated to be made by or as a result  
10 of the development in the form of user fees, debt service payments, taxes, and all other available sources of  
11 funding the system improvements.

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13        **NEW SECTION. Section 6. Applicability of ordinances and resolutions.** After a local government  
14 entity has adopted an ordinance or resolution that imposes impact fees for a type of public facility under [sections  
15 1 through 6], a requirement for a system improvement for that type of public facility may be imposed only as  
16 provided in the ordinance or resolution.

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18        **Section 7.** Section 2-7-503, MCA, is amended to read:

19        **"2-7-503. Financial reports and audits of local government entities.** (1) The governing body or  
20 managing or executive officer of a local government entity, other than a school district or associated cooperative,  
21 shall ensure that a financial report is made every year. A school district or associated cooperative shall comply  
22 with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed  
23 by the department, and be completed within 6 months of the end of the reporting period. If the governing body  
24 has collected impact fees under [sections 1 through 6], the report must include information regarding the  
25 collection and expenditure of impact fees. The local government entity shall submit the financial report to the  
26 department for review.

27            (2) The department shall prescribe a uniform reporting system for all local government entities subject  
28 to financial reporting requirements, other than school districts. The superintendent of public instruction shall  
29 prescribe the reporting requirements for school districts.

30            (3) (a) The governing body or managing or executive officer of each local government entity receiving

1 revenue or financial assistance in the period covered by the financial report in excess of \$200,000 shall cause  
2 an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit  
3 must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be  
4 completed and submitted to the department for review within 1 year from the close of the last fiscal year covered  
5 by the audit.

6 (b) The governing body or managing or executive officer of a local government entity that does not meet  
7 the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or,  
8 in the case of a school district, if directed by the department at the request of the superintendent of public  
9 instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements  
10 of the entity for the preceding fiscal year.

11 (4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance  
12 audit of an individual financial assistance program that a local government is required to conduct under any other  
13 state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the  
14 information that it requires to carry out its responsibilities under state or federal law or regulation, the state  
15 agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid  
16 a duplication of effort.

17 (5) In addition to the audits required by this section, the department may at any time conduct or contract  
18 for a special audit or review of the affairs of any local government entity referred to in this part. The special audit  
19 or review must, to the extent practicable, build upon audits performed pursuant to this part.

20 (6) The fee for the special audit or review must be a charge based upon the costs incurred by the  
21 department in relation to the special audit or review. The audit fee must be paid by the local government entity  
22 to the department of revenue and must be deposited in the enterprise fund to the credit of the department."  
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24 **Section 8.** Section 7-1-111, MCA, is amended to read:

25 **"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from  
26 exercising the following:

27 (1) any power that applies to or affects any private or civil relationship, except as an incident to the  
28 exercise of an independent self-government power;

29 (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective  
30 bargaining for public employees, unemployment compensation, or workers' compensation), except that subject

1 to those provisions, it may exercise any power of a public employer with regard to its employees;

2 (3) any power that applies to or affects the public school system, except that a local unit may impose  
3 an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall  
4 exercise any power that it is required by law to exercise regarding the public school system;

5 (4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

6 (5) any power that establishes a rate or price otherwise determined by a state agency;

7 (6) any power that applies to or affects any determination of the department of environmental quality  
8 with regard to any mining plan, permit, or contract;

9 (7) any power that applies to or affects any determination by the department of environmental quality  
10 with regard to a certificate of compliance;

11 (8) any power that defines as an offense conduct made criminal by state statute, that defines an offense  
12 as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months'  
13 imprisonment, or both, except as specifically authorized by statute;

14 (9) any power that applies to or affects the right to keep or bear arms, except that a local government  
15 has the power to regulate the carrying of concealed weapons;

16 (10) any power that applies to or affects a public employee's pension or retirement rights as established  
17 by state law, except that a local government may establish additional pension or retirement systems;

18 (11) any power that applies to or affects the standards of professional or occupational competence  
19 established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession  
20 or occupation;

21 (12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title  
22 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife);

23 (13) any power to impose an impact fee, as defined in [section 2], other than as authorized under  
24 [sections 1 through 6];

25 ~~(13)~~(14) any power that applies to or affects landlords, as defined in 70-24-103, when that power is  
26 intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title  
27 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require  
28 landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within  
29 the local government's jurisdiction.

30 ~~(14)~~(15) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy."

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2        **NEW SECTION.** **Section 9. Codification instruction.** [Sections 1 through 6] are intended to be  
3 codified as an integral part of Title 7, chapter 11, and the provisions of Title 7, chapter 11, apply to [sections 1  
4 through 6].

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6        **NEW SECTION.** **Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are  
7 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
8 the part remains in effect in all valid applications that are severable from the invalid applications.

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10       **NEW SECTION.** **Section 11. Transition -- applicability -- saving.** (1) Except as provided in  
11 subsection (2), an ordinance or resolution that imposes impact fees must be in compliance with the provisions  
12 of [sections 1 through 6] or be repealed by October 1, 2006.

13       (2) [Sections 1 through 6] do not apply to impact fees that are pledged for the payment of bonds before  
14 [the effective date of this act].

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